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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,993	07/11/2003	Robert Toth	16804-3	4242

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EXAMINER	
PIERCE, WILLIAM M	

ART UNIT	PAPER NUMBER
3711	

DATE MAILED: 02/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/617,993	TOTH, ROBERT	
	Examiner	Art Unit	
	William M Pierce	3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 October 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-6* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-6* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 1-6 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim 1 generally relates to a manipulation of "people" (or sets of members i.e. teams). In line with MPEP 2105,

> "If the broadest reasonable interpretation of the claimed invention as a whole encompasses a human being, then a rejection under 35 U.S.C. 101 must be made indicating that the claimed invention is directed to nonstatutory subject matter."

Additionally, would this appear to fall into the category of a manipulation of abstract ideas. MPEP 2106 gives a little guidance in that it states.

> If the "acts" of a claimed process manipulate only numbers, abstract concepts or ideas, or signals representing any of the foregoing, the acts are not being applied to appropriate subject matter. Schrader, 22 F.3d at 294-95, 30 USPQ2d at 1458-59. Thus, a process consisting solely of mathematical operations, i.e., converting one set of numbers into another set of numbers, does not manipulate appropriate subject matter and thus cannot constitute a statutory process.

Further an interpretation of the claims is that they do not expressly or implicitly require performance of any of the steps by a machine (or physical apparatus) and such structure will not be read into the claims for the purpose of the statutory subject matter analysis. This requirement is one that the claims recite a "practical application, i.e., 'a useful, concrete and tangible result.'" *State St. Bank & Trust Co. v. Signature Fin. Group Inc. ,149 F.3d 1368, 1371, 47 USPQ 2d 1596, 1600-01 (Fed. Cir. 1998).*

While a "process" is well recognized as statutory subject matter, not every process falls within the "useful arts" under 101. *Cochrane v. Deener, 94 U.S. 780, 788 (1877)* define "a process is...an act or series of acts, performed upon the subject matter to be transformed and reduced to a different state or thing.

In the instant case, the claims do not require the manipulation of an apparatus, do not result in a concrete and tangible result and fail to transform the subject matter to a something different than existed before the steps were performed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaufmann in view of Graham and further in view of Craven.

As to claims 1, 5 and 6, Kaufmann teaches a bowling tournament where an eligible group of bowlers are "initially broken into a number of groups". While he does not discuss using "average scores attained by league players" and "eight divisions", an average score is well known to be used as a ranking for a bowler. Noting this, Graham teaches "pair wise rankings is a method of ranking teams based on how well they played against other teams" ([0046], ln. 7). As such, to have used "pair wise rankings" in the tournament of Kaufmann would have been obvious as taught by Graham so that player of similar rankings would initial compete against one another. The number of initial rankings being eight is considered an obvious matter of choice. Claims 3 and 4 are considered obvious matters in design choice in designating the manner of ranking a player. In tournament play, it is well known to conduct earlier rounds on a local level, proceed to a regional level and then culminate in a championship round at a single location. See Craven for example. The number of second round locations is considered and obvious matter of choice. As to claim 2, players to enter tournaments are known to belong to leagues or associations that require the payment of fees or dues before competing in a tournament.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Thacher, Sabaliauskas and Chanda show tournament methods for competitive events.

Any inquiry concerning this communication and its merits should be directed to William Pierce at E-mail

address bill.pierce@USPTO.gov or at telephone number (571) 272-4414.

For **official fax** communications to be officially entered in the application the fax number is (703) 872-9306.

For **informal fax** communications the fax number is (703) 308-7769.

Any inquiry of a general nature or relating to the **status** of this application or proceeding can also be directed to the receptionist whose telephone number is (703) 308-1148.

Any inquiry concerning the **drawings** should be directed to the Drafting Division whose telephone number is (703) 305-8335.